

2b (2b)
IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL, 1998

BEFORE

HON'BLE MR. JUTICE S.R. VENKATESHA MURTHY

H.R.R.P. NUMBER 1328 OF 1997

Between:

79
K. Andanappa,
aged about 50 yrs.,
son of Kariyappa,
Red Rose Dry Cleaners,
Ramanjaneya Road,
Srinagaar,
Bangalore.

PETITIONER

(Sri. C.N. Satyanarayana Shastri for
petitioner)

And:

1. Smt. Jayamma w/o Late
Hanumanthappa, aged 50 yrs.

2. H. Yoga Chandra, s/o Late
Hanumanthappa, aged 35 yrs.

3. Smt. Gayathri w/o
Puttaraju, d/o late
Hanumanthappa,
aged about 33 yrs.

4. Kum. Meenakshi d/o
late Hanumanthappa, aged about 29 yrs.

5. Kum. H. Padma,
d/o late Hanumanthappa,
aged about 25 yrs.

6. H. Ranganath s/o
late Hanumanthappa,
aged about 23 yrs.

All are residing at Old No.78,
New No.28/1, Sri, Ramanjaneya Road,
Srinagar,
Bangalore.

RESPONDENTS

(Sri. G.R.Lakshmipathi Reddy for
Caveator/respondernt)

This HRRP is filed under section 50(1) of the KRC Act, against the order dated 2-8-1997 passed in HRC No. 340/92 on the file of the XII Addl.Judge, Court of Small Causes, Bangalore, allowing the petition filed under section 21(a) and (h) of KRC Act.

This Revision filed under section 50(1) of the KRC Act against the order dated 2-8-1997 passed in HRC No.340/92 on the file of the XII Addl.Judge, Court of Small Causes, Bangalore, allowing the petition filed u/s. 21(1)(a) and (h) of the KRC Act.

This Revision being reserved for orders this day, the Court made the following:

ORDER

This is a tenant's Revision against the order dated 2-8-1997 in HRC No. 340 of 1992 on the file of the Court of Small Causes, Bangalore.


2. The parties are referred to according to their array in the trial court.

3. The petitioners sought eviction of the respondent-tenant from the schedule premises under section 21 (1)(a) and (h) of the



Karnataka Rent Control Act, 1961 (hereinafter referred to as the Act). The petitioners claimed that they are running powerlooms in the ground floor of the premises and are residing in the first floor of the premises. The schedule premises is a shop measuring about 10'x15' wherein the respondent is running a laundry. The petitioners' claim that from 1-10-1988, the respondent is in arrears of rent at the rate of Rs.320/- per month. By a notice, the respondent was called upon to pay the arrears of rent from 1-10-1988 upto 31-12-1991 amounting to Rs.13,480/-. The respondent, it is alleged did not pay the rent, despite notice, ^{bwr} that came up with false defence and has not paid the money as claimed. The petitioners claim that the schedule premises is required for the purposes of cleaning and storing the manufactured sarees. The respondent, it is alleged, despite notice, failed to comply with the demand. Hence, the petition.

4. The respondent-tenant denied the case of the petitioners so far as the rate of rent and arrears of rent was concerned. The rate of



rent, according to the respondent, was only Rs.250/- per month and that he has paid the arrears of rent upto date and even after the notice of demand; thus, denying liability for eviction under section 21 (1)(a) of the Act. The respondent has denied the petitioners' case that the premises is reasonable and bonafide required for the use and occupation. The respondent pleaded that he would suffer greater hardship by being evicted from the premises.


5. Evidence was tendered on behalf of the parties. The trial Judge found that the rate of rent was Rs.250/- per month but held that the respondent-tenant was in arrears of rent as claimed by the petitioners and had no defence against eviction under section 21 (1)(a) of the Act. The trial Judge also found that the premises is required for the business of the petitioners and directed eviction of the respondent under section 21 (1)(a) and (h) of the Act.




6. In this Revision, the contention of the respondent-tenant is that the eviction is unsustainable in law on any of the grounds pleaded in the case.

7. Admittedly, the petitioners were ~~not~~ not able to demonstrate that the rate of rent was Rs.320/- per month with effect from 1-1-1998. Admittedly, the rate of rent was Rs.250/- per month prior to the alleged increase to Rs.320/permonth. There is no documentary evidence to show that the rate of rent is Rs.320/- per month. In the circumstances, the finding recorded by the trial Judge that the rate of rent was Rs.250/per month is not open to challenge.

8. The trial Judge found that from 1-10-1981, the arrears of rent at the rate of Rs.250/- per month had been proved and the respondent-tenant was liable to pay the same. ~~There is~~ A reading of the evidence of the petitioner would show that the petitioner did not possess any counterfoils of receipts for payment of ~~rent~~ rent. Except the claim that the rent was in arrears from October, 1988, there is no material to




show the date from which the rent was in arrears nor is there any material available that the respondent-tenant supporting a claim for either the rate of rent or the date from which the rent was due. The respondent-tenant has come out with a case that no receipts were issued for rent paid and whatever rent was due has been paid by him and the last of the payment was by money order and so there was nothing in arrears. The burden of proving not only the rate of rent but as also the date from which the rent is in arrears, is on the petitioners-landlords, who have, in my opinion, have failed to discharge this burden. The trial Judge was clearly wrong in holding that there was arrears of rent at the rate of Rs.250/- per month from 1-10-1988 upto 1992. In the absence of any acceptable evidence regarding arrears claimed in the notice issued on behalf of the petitionrs, the trial Judge was not justified in holding that the respondent-tenant was in arrears from 1-10-1988 though at the rate of Rs.250/- per month. When there is no proof of the arrears of rent as claimed in the notice, it hardly needs mention that an eviction under section 21 (1)(a) of the

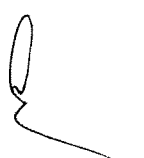


Act is impermissible. The trial Judge was clearly wrong in holding that the respondent was in arrears of rent from 1-10-1988 even at the admitted rate of rent of Rs.250/- per month. The finding in favour of the petitioner under section 21 (1)(a) of the Act is set aside.

9. Admittedly, the petitioners are running a powerloom in their premises. It is their case that they have borrowed a sum of Rs.1,00,000/- from the Textile Co-operative Bank, Bangalore against their machinery for purposes of their business. The machinery pledged for securing the loan are also enumerated in Ex.P.6. There are five powerlooms and other allied machinery for purposes of business. The petitioners claim that they required the schedule premises for purposes of carrying on operations such as folding sarees, cleaning sarees, storing them after all these operations. The evidence of the petitioner would show that they have got five powerlooms and such other allied machinery as noticed in Ex.P.5. It is the case of the petitioners that they required the space for purposes of




operations such as the one referred to in para 10 of the petition. The petitioners are admittedly residing in the first floor of the house. It is stated to be a small one with a room, a hall, and a kitchen bath etc. During the course of the proceedings, two of the sisters of the first petitioner were married but still the family consists of petitioners 1, 2, 5 and 6. Petitioners 5 and 6 are young and studying. The accommodation in the house necessarily would affect their need especially having regard to the evidence of P.W1 that the folding, cleaning and storing of the silk sarees is done in the living area of the petitioners' house. These basic facts are [✓]not challenged by the respondent-tenant. If the petitioners want to make themselves comfortable and enjoy a measure of privacy in their house, it cannot be said that the claim is an extravagant one. It was sought to be contended that the claim of the petitioners for additional accommodation is uncomfortable inasmuch as the petitioners cannot have five rooms in the existing accommodation. But P.W.1, has, in his evidence denied the claim of the respondent-tenant and there is no other




material to show that the petitioners' claim could not be, ~~or in any event~~, inherently improbable. Ex,P.6 would show that five powerlooms are there with the petitionrs. When the petitionrs seek to make their business more viable ~~In an other into the world~~, the claim of the petitioners cannot be regarded as an exaggeration.

10. The oblique motive suggested on behalf of the respondent namely enhancing the rent has not been satisfactorily established. The trial Judge also has rightly taken the same view. In the circumstances, it cannot be said that the claim of the petitioners lacks reasonableness and bonafides. The finding recorded by the trial Judge so far as it relates to reasonableness and bonafides of the petitioners' claim is not open to challenge as being not based on record. There was absolutely no reason as to why the [✓]finding recorded by the trial court in this behalf should be interfered with.




11. The petitioners cannot be compelled to huddle themselves in an overcrowded accommodation, with a view to seeing that the respondent-tenant is otherwise not affected.

12. The respondent's claim of hardship has no particular significant aspect persuading this Court to take a view that the respondent-tenant would suffer greater hardship on being evicted from the premises. The locality in which the schedule premises is constructed is admittedly in ^{the} ~~a~~ outskirts of the city where there is not bound to be severe pressure for accommodation. The respondent-tenant should be able to secure an alternate premises even though at a ^{slightly} ~~slightly~~ higher rent or at a more distant place. None of the above circumstances can be stated to deprive the petitioners-landlords an order of eviction which is otherwise deserved. The respondent-tenant should be able to secure alternative accommodation within reasonable time. Having examined all aspects of the matter, it appears clear to me that the trial Judge, rightly came to the conclusion that the requirement of the petitioners under section 21 (1)(h) of the Act had been clearly established.



The materials on record does not reveal a case for balancing the interest of the petitioner and the respondent-tenant in such a way as to result in an order of partial eviction. The burden of proving the case for partial eviction is essentially on both the parties to the proceedings, when, they have not chosen to tender any evidence in support of the case for partial eviction, it is clear that no case for partial eviction is sought to be pleaded by or on behalf of the tenants. In the circumstances, I am of the opinion that the finding of the trial court that there is no case for the partial eviction of the respondent from the premises is not open to challenge in revision.

13. In the circumstances of the case, the revision deserves to be allowed only to the extent of setting aside the ground for eviction under section 21 (1)(a) of the Act while maintaining eviction of the respondent from the schedule premises under section 21 (1)(h) of the Act. The respondent-tenant is entitled to reasonable time to surrender vacant possession of the premises under section 21 (1)(h) of the Act. Taking these circumstances into



90

consideration, I am of the opinion that the respondent-tenant should be given time till the end of December, 1998 to surrender possession of the premises. The revision is partly allowed setting aside eviction of the respondent-tenant under section 21 (1)(a) of the Act. The Revision is dismissed so far as it relates to eviction under section 21 (1)(h) of the Act. Having regard to the partial success of the petitioners, there will be no order as to costs.

Sd/-
JUDGE

pv.